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9/Declaration
1.132

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :Zecchino et al.

Serial No.: 09/995,358

Group Art Unit: 1615

Filed: November 26, 2001

Examiner: B. Fubara

For: GELLED AQUEOUS COSMETIC COMPOSITIONS

DECLARATION UNDER 37 CFR 1.132

I, JAMES T. HARRISON, declare and state as follows:

1. I am one of the inventors named in the above-identified application.
2. I understand that the Examiner has rejected claims of the application as being obvious in view of the Wheeler (WO 97/32559) reference in view of two other references. It is my understanding that the Examiner has in essence stated that, in view of the combined prior art references, it would have been obvious to substitute a polymeric sulfonic acid for the traditional water soluble gellants disclosed in Wheeler to obtain a composition of the present invention.
3. I am familiar with the Wheeler reference. It is my belief that the use of a polymeric sulfonic acid as a gellant of an electrolyte-containing aqueous phase in which an oil-containing biliquid foam is dispersed provides an unexpected advantage over the use of a more

traditional gellant, such as is recommended in Wheeler. In particular, the present inventors have found the compositions of the present invention to maintain stability under conditions that induce instability in the Wheeler compositions.

4. In order to demonstrate the superior stability of the claimed compositions over those of the prior art, I conducted a comparison between a first formula of the type disclosed in Wheeler, namely the toner in Example 5, in which a carbomer type of thickener is used to gel the aqueous phase, and a second formula, differing from the first only in the use of a polymeric sulfonic acid as the gellant, as required by the present claims. The formulas for each composition are attached hereto as Exhibit A. The Wheeler formula will be referred to herein as Formula A, and the formula of the present invention as Formula B.

In each formula, an equivalent amount of gellant (0.08% solids) was used. In addition, to each was added an equivalent amount of NaCl (0.02%) was used to provide the presence of electrolytes in the formula. The final pH of the formulas ranged from about 4.9 (Formula B) to about 5.5 (Formula A), the slight difference being attributable to the different chemical nature of the gellants. However, in each case, pH was below 7, as required by the present claims.

5. Each formula was subjected to a freeze-thaw procedure, which is a standard industry test used to determine the relative stability of a cosmetic formula. In brief, each formula is first frozen for 24 hours at -17°F and then returned to room temperature for 24 hours. This process is then repeated two more times for a total of three times. After the procedure is completed, each formula is observed for signs of instability. At the end of the procedure, Formula A was exhibiting syneresis, i.e., the gel had contracted with a concurrent release of

fluid. In contrast, Formula B retained its integrity after the three freeze-thaw cycles.

6. These results demonstrate that products prepared according to the present invention have a greater level of stability than those prepared in accordance with the teachings of the Wheeler reference. In particular, the results demonstrate that the polymeric sulfonic acids of the present invention are superior to the traditional water-soluble gellants, such as the carbomers that are recommended in Wheeler, in their ability to produce a stable gel.

7. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine, or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

By: 

James T. Harrison

Date: 3-18-03

EXHIBIT A

Note: Biliquid Foam in each formula prepared according to Example 1 of Wheeler, using the oils designated in Example 5

Formula A

| SEQUENCE | TRADE NAME / CTFA NAME | PERCENT |
|------------------------------|--|-------------------------|
| 01 - 10 | DEIONIZED WATER PURIFIED WATER | 0.546000 |
| 02 - 10 | DOW CORNING 345 FLUID CYCLOMETHICONE | 5.400000 |
| 02 - 20 | VOLPO L3 SPECIAL C12-13 PARETH-3 | 0.054000 |
| 03 - 10 | DEIONIZED WATER PURIFIED WATER | 0.091000 |
| 04 - 10 | DOW CORNING 2-9023 FLUID DIMETHICONOL | 0.900000 |
| 04 - 20 | VOLPO L3 SPECIAL C12-13 PARETH-3 | 0.009000 |
| 05 - 10 | DEIONIZED WATER PURIFIED WATER | 83.840000 |
| 05 - 20 | GLYCERINE USP 99% (VEGETABLE) GLYCERIN | 5.000000 |
| 05 - 30 | MERGUARD 1200 METHYLDIBROMO GLUTARONITRILE/PHENOXYETHANOL | 0.100000 |
| 06 - 10 | CARBOPOL 980 (2% AQ SOLUTION) | 4.000000 |
| 06 - 20 | CAUSTIC SODA 30% WATER/SODIUM HYDROXIDE | 0.040000 |
| 07 - 10 | SODIUM CHLORIDE GRANULAR USP SODIUM CHLORIDE | 0.020000 |
| TOTAL NUMBER OF ELEMENTS: 12 | | TOTAL PERCENT: 100.0000 |

Formula B

| SEQUENCE | TRADE NAME / CTFA NAME | PERCENT |
|------------------------------|--|-------------------------|
| 01 - 10 | DEIONIZED WATER PURIFIED WATER | 0.546000 |
| 02 - 10 | DOW CORNING 345 FLUID CYCLOMETHICONE | 5.400000 |
| 02 - 20 | VOLPO L3 SPECIAL C12-13 PARETH-3 | 0.054000 |
| 03 - 10 | DEIONIZED WATER PURIFIED WATER | 0.091000 |
| 04 - 10 | DOW CORNING 2-9023 FLUID DIMETHICONOL | 0.900000 |
| 04 - 20 | VOLPO L3 SPECIAL C12-13 PARETH-3 | 0.009000 |
| 05 - 10 | DEIONIZED WATER PURIFIED WATER | 79.800000 |
| 05 - 20 | GLYCERINE USP 99% (VEGETABLE) GLYCERIN | 5.000000 |
| 05 - 30 | MERGUARD 1200 METHYLDIBROMO GLUTARONITRILE/PHENOXYETHANOL | 0.100000 |
| 06 - 10 | ARISTOFLEX AVC/ USA AMMONIUM ACRYLODIMETHYLTAURATE/VP COPOLYMER | 0.080000 |
| 06 - 20 | DEIONIZED WATER PURIFIED WATER | 8.000000 |
| 07 - 10 | SODIUM CHLORIDE GRANULAR USP SODIUM CHLORIDE | 0.020000 |
| TOTAL NUMBER OF ELEMENTS: 12 | | TOTAL PERCENT: 100.0000 |